IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 6407 OF 2005

Shri Sikandar s/o Bhura Kashyap ... PETITIONER

Versus

Divisional Caste Certificate Verification Committee and Ors. ... RESPONDENTS

S/Shri B.T. Patil & A.B. Patil, Advocates for the petitioner.
Smt. S.S. Wandile, AGP for the respondents.

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CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
MARCH 22, 2007.

ORDER :

Heard Shri Patil, learned counsel for the petitioner and Smt. Wandile, learned Assistant Government Pleader for the respondents.

2. The challenge in this writ petition is to the order dated 6.9.2005 passed by Respondent No.1 – Divisional Caste Certificate

Verification Committee, by which the said Committee has communicated to the petitioner that as the petitioner is not permanent resident of State of Maharashtra and has migrated to Maharashtra from other State, he is not eligible to claim concessions available to backward classes and his caste claim cannot be scrutinised by it. It is not in dispute that the family of the petitioner hails from Uttar Pradesh and the petitioner claims that he belongs to "Kewat" caste which is declared as O.B.C. Tribe in Maharashtra.

3. The basic contention of the petitioner is that he is born on 4.6.1969 at Village – Tekadi in Parshivoni Tahsil in Nagpur District and his entire schooling has been in State of Maharashtra only and he is resident of Maharashtra since his birth. He has also relied upon certain documents like certificate issued by Police Patil to point out that his father has been residing in Maharashtra since 1955-56. He, therefore, contends that denial of certificate to him on the ground that he is not permanent resident of Maharashtra is improper and the Committee should scrutinise his caste claim and issue him appropriate certificate.

4. The learned AGP has relied upon the Government Resolutions dated 24.8.1995 and 10.3.2005. She contends that person claiming benefit in State of Maharashtra must be native of State of Maharashtra. She has pointed out that as the petitioner himself has admitted that he has migrated from Uttar Pradesh, he is not entitled to claim any benefit in relation to his caste Kewat in State of Maharashtra. She further states that when the Divisional Caste Certificate Verification Committee examined the application submitted by the petitioner, it found that he disclosed that his family has migrated to State of Maharashtra from Uttar Pradesh in 1971-72. The relevant query i.e. query No.10 in said application and its answer has been reproduced in vernacular in affidavit and in said answer, the petitioner has stated that his elder brother by name Shivsagar Bhura Kashyap got employment in W.C.L. at Kamptee in 1971-72 and hence entire family migrated to Maharashtra from Uttar Pradesh. She points out that the caste re-recognized in relation to particular State by the State of Maharashtra and only members of said caste are eligible to claim benefit in said State.

5. Parties have relied upon various judgments. In 2006 (4) LJSOFT 102 = 2006(2) Mah.L.J.825 Santosh s/o. Singwa Padoti Vs. Caste Scrutiny Committee & Anr., the Division Bench of this Court while considering Caste claim of a migrant Petitioner who belonged to "Gond" community from State of Madhya Pradesh to Maharashtra in the light of States Reorganisation Act, 1956, found that father of petitioner was permanent resident of District Rajnandgaon in M.P. Said District was earlier the part of erstwhile Central Province and Berar Region and Nagpur Region now in Maharashtra was included in the same. By virtue of Constitutional Scheduled Tribe Order, 1950, the Tribe "Gond" was included in both States prior to the States Reorganization Act & on bifurcation the member of the Scheduled Tribe belonging to one Region would continue to get the same benefit. Petitioner was held entitled to the status of Scheduled Tribe in the State of Maharashtra & order passed by Caste Scrutiny Committee rejecting the caste claim of petitioner on the ground of being a migrant has been quashed and set aside. Following observations of Hon'ble Apex Court in the case

in Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others reported in 2003 (12) LJSOFT (SC) 9 : 2004 (4) Mh.L.J. 784 are relied upon by the Division Bench and are relevant even in present case:--

> "But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and denied facilities for development and growth in several States. They are required protective preference, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantageous and developed sections of the Community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/ Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in the Chhindwara region, a part of which, on State's reorganization, has come to the State of Maharashtra was entitled to the benefit of reservation? It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a Tribe has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of

> the Constitution may not get the same benefit in other State whose Governor has not been selected; but it is another thing to say that when an area dominated by the members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and unanswered would be as to whether the members of the Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation there of in terms of State's Reorganization Act."

6. In (2000) 2 SCC 20 =AIR 2000 S.C. 525 -Union of India v. Dudh Nath Prasad, the Respondent was a member of Indian Administrative and Allied Services. He was appointed against a reserved vacancy after being declared successful at examination by U.P.S.C. for I.A.S. Para 5 of the "Instructions to the Candidates contained in the pamphlet issued for the Indian Administrative Service etc. Examination, 1966, published under the authority of the Government of India required that the Scheduled Caste Certificate had to be issued by the District Officer or the Sub-Divisional-Officer

etc. of the District in which the parents of the candidate ordinarily resided. The note appended to paras of the instructions required the term "ordinarily reside" to be given the same meaning as in Section 20 of the Representation of the People Act. The respondent and his parent who admittedly belonged to the Nuniya caste was born and brought up in State of Bihar. He had his education upto graduation level in State of Bihar. His parents were, however, residing in State of West Bengal for nearly 30 years prior to the I.A.S. Examination. Nuniya caste was notified by the State of West Bengal as Scheduled Caste but was not so declared by State of Bihar. The respondent had produced a caste certificate declaring him to be Nuniya caste of West Bengal, which was a notified Scheduled Caste. After the appointment, the Caste certificate of respondent was doubted on the ground that since the respondent was born and had his education in State of Bihar, he could not be treated to be member of Nuniya community of State of West Bengal which was a notified Scheduled Caste. Hon'ble Supreme Court held that since the parents of the respondent were admittedly living in District Howrah in West Bengal for more than 30 years before the Examination in question was held,

the District Officer or for that matter the Sub-Divisional Officer in the instant case could legally issue the caste certificate and also certify that his parents were "ordinarily residing" in District Howrah. The mere fact that the respondent, for the purposes of education, stayed in the State of Bihar and graduated from a college in that State would not affect the status of his parents who were already living in District Howrah for more than 30 years and consequently could be treated as "ordinarily residing" in District Howrah. Their status should not be affected by the temporary residence of the respondent, for the purpose of his education, in the State of Bihar. In such a situation, the respondent had no option but to obtain the certificate from the Sub-Divisional Officer, Howrah, as he could not have deviated from the "Instructions" already issued by the UPSC.

7. (1994) 5 SCC 244 Action Committee on issue of caste vs. Union Of India, in this judgment, the Hon'ble Apex Court has considered provisions of Articles 341 and 342, particularly the words "for the purposes of this Constitution in relation to that State". This judgment is considered by Hon' Apex Court in its subsequent

judgment in the case of Sudhakar Vithal Kumbhare vs. State of Maharashtra reported at 2004 (4) Mh.L.J. in 784 and this later judgment of Hon'ble Apex Court is considered and relied upon by Division Bench of this Court in case of Santosh s/o. Singwa Padoti Vs. Caste Scrutiny Committee & Anr. (supra). It is therefore not necessary to refer to this judgment of Hon'ble Apex Court in detail. The Division Bench judgment in the case of Chetna Tank vs. Committee for Scrutiny 2005(4) Mh. L.J. 711 again relies upon and follows both of these judgments of Hon'ble Apex Court.

8. The question for consideration in the later Division Bench judgment of Chetna (supra) was whether petitioner born in State of Bihar on 14th August 1968 and educated in State of Madhya Pradesh and married to a person domiciled in Maharashtra on 17/6/1990 was entitled to contest a seat reserved for Other Backward Class. Gujar (Gurjar) is recognized OBC in Madhya Pradesh while Gujar-Kadiya is recognized OBC in Maharashtra. Petitioner was migrant to Maharashtra and in this background Division Bench held that she at the highest would be entitled to benefits in State of origin which is

Bihar and would not be entitled to benefit which the notified OBC got in Maharashtra. After considering various decided cases, Division Bench at the end of paragraph 6 summarized their findings as under: --

"1). A person belonging to a caste or tribe which is notified for that State is entitled to the benefits only in that State and not the State where he/she migrates.

2). If a caste or tribe is notified as a caste or tribe in both the States, it does not necessarily mean that the migrant is entitled to the rights privileges and benefits admissible to a member of the Scheduled Caste or tribe of migrant State."

9. These judgments, therefore, conclusively show that caste "Kewat" of present petitioner recognised as Nomadic tribe in Uttar Pradesh cannot be certified by Divisional Caste Scrutiny Committee of State of Maharashtra. Caste "Kewat" is recognized as OBC in Maharashtra and Maharashtra is not State of origin for the Petitioner. The importance of State of origin in such matters cannot be overemphasized.

10. The petitioner is not in a position to show that he is native of Maharashtra and he is not in a position to demonstrate that he fulfills the requirements of Government Resolutions dated 24.8.1995 and 10.3.2005. The petitioner has also not challenged these Government Resolutions.

11. In the circumstances, we find that no case is made out warranting interference in writ jurisdiction. Writ Petition is accordingly dismissed. No order as to costs.

JUDGE **JUDGE**

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